



**STATE OF NEW JERSEY**

**DECISION OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Joseph DeMarco :  
Bayside State Prison, Department of :  
Correction :

CSC DKT. NOS. 2021-988 and 2021- :  
1022 :

Hearing Granted  
(Corrected Decision)

**ISSUED: MARCH 29, 2021 (NFA)**

The Civil Service Commission (Commission) considered the request for a hearing concerning Joseph DeMarco, represented by Christopher St. John, Esq., from his appeals of two removals, from the position of Senior Correctional Police Officer, Bayside State Prison.

By way of background, DeMarco was served a Preliminary Notice of Disciplinary Action (PNDA) on June 16, 2020, seeking his removal, and charging him with conduct unbecoming a public employee and other sufficient cause, namely abuse of sick leave and falsification based on his conduct regarding events that occurred on June 8, 2020. The specifications indicated, in pertinent part, that on June 8, 2020, DeMarco used a sick day and instead, participated in a group demonstration where he committed further inappropriate conduct. Subsequently, on July 16, 2020, he was served a second PNDA seeking his removal and charging him with conduct unbecoming a public employee and other sufficient cause, namely violation of the State Policy Prohibiting Discrimination in the Workplace (State Policy) based on his conduct regarding events that occurred on June 8, 2020. The specifications underlying that PNDA indicated that his conduct on June 8, 2020 was in violation of the State Policy. DeMarco had a consolidated departmental hearing on the two PNDAs on November 16, 2020. As a result, two separate Final Notices of Disciplinary Action (FNDA) were issued on December 16, 2020, upholding all of the charges and

his removal from employment.<sup>1</sup> The FNDA's were sent by certified mail and signed for on December 19, 2020.<sup>2</sup>

The Commission received an appeal from DeMarco pertaining to the second FNDA in a letter postmarked on December 21, 2020. Subsequently, it received an appeal from DeMarco of the second FNDA in a letter postmarked on January 13, 2021. The issue in this matter is whether the appeal of the second appeal is timely, and if not, whether that renders his appeal of the first FNDA moot.

## CONCLUSION

*N.J.S.A.* 11A:2-15 provides that appeals of disciplinary charges shall be made to the Commission no later than 20 days from receipt of the final written determination of the appointing authority. *N.J.A.C.* 4A:2-2.8(a) provides that an appeal from a FNDA must be filed within 20 days of receipt by the employee.

In this matter it is clear that DeMarco's appeal of the first FNDA was timely filed. However, based on *N.J.S.A.* 11A:2-15 and *N.J.A.C.* 4A:2-2.8(a), the appeal of the second FNDA is untimely, as it would have had to have been postmarked no later than January 8, 2021 to be timely. Nevertheless, the circumstances of this matter necessitate a different conclusion. In this regard, all of the charges against DeMarco were issued based on his actions on one day, June 8, 2020, and all related to or flowing from one incident. While the appointing authority issued two FNDA's to capture all of the charges<sup>3</sup> as it essentially added charges at a later date, it was not required to, and in fact should not have, issued two separate FNDA's under these circumstances. Rather, given that the specifications were all based on misconduct that occurred on the same date, and all stemmed from his actions or inactions on that day, one consolidated FNDA should have been issued capturing all of the sustained charges and specifications. The fact that two separate FNDA's were issued, especially two that were substantially similar, could create a sense of confusion. Therefore, the Commission deems that the appeal of the second FNDA is considered timely. To find otherwise would be to uphold form over substance and lead to an unjust determination in these matters.

Accordingly, the Commission grants a hearing in these matters and orders that they proceed at the Office of Administrative Law as one removal action subsuming all of the sustained charges and specifications on the two FNDA's.

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<sup>1</sup> No removal date is indicated on either FNDA. However, it is presumed that the removals would be effective on the same date.

<sup>2</sup> The appointing authority sent an e-mail to Commission staff, dated February 9, 2021, stating that the two FNDA's were sent by certified mail and regular mail on December 16, 2020, and signed for on December 19, 2020.

<sup>3</sup> It is assumed the second FNDA was issued later than the first as the appointing authority would have first had to perform an investigation under *N.J.A.C.* 4A:7-3.1, *et seq.*, to determine that DeMarco violated the State Policy.

This matter is based on the particular facts and circumstances presented and should not be used as precedent in any subsequent matter.

**ORDER**

Therefore, the appellant's request for a hearing is granted. Further, it is ordered that these matters be referred to the Office of Administrative Law for a hearing.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 24<sup>TH</sup> DAY OF MARCH, 2021

*Deirdre' L. Webster Cobb*

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